

# HELM

FINANCIAL CORPORATION

One Embarcadero Center • San Francisco, CA 94111

415/398-4510

FAX 415/398-4816

RECORDATION NO. 7753-A FILED

JAN 19 '99

9-15 AM

January 12, 1999

Mr. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Dear Mr. Williams:

Enclosed are three (3) originals of the Assignment and Assumption Agreement ("**Agreement**") dated January 7, 1999 between the following parties:

"**Assignor**": The CIT Group/Equipment Financing, Inc.  
1211 Avenue of the Americas  
New York, NY 10036

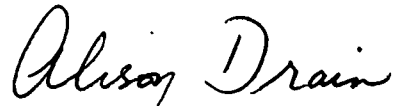
"**Assignee**": Helm Financial Corporation  
One Embarcadero Center, Suite 3700  
San Francisco, CA 94111

The equipment involved in this transaction is as follows:

Equipment: See attached Schedule A to the Agreement.

Please file this Agreement as a supplementary document to Recordation No. 17753 filed on March 20, 1992 and return **two (2)** stamped originals to my attention. A check covering the filing fee of twenty-six dollars (\$26.00) is enclosed.

Sincerely,

  
Alison Drain  
Document Administrator

/ad  
Enclosures (3)

stb\assign\cit107.hfc

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423-0001

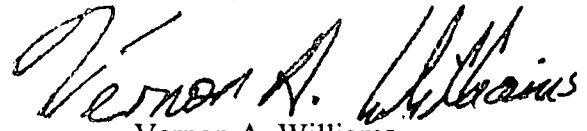
OFFICE OF THE SECRETARY

Alison Drain  
Helm Financial Corporation  
One Embarcadero Center, Ste. 3700  
San Francisco, CA., 94111

Dear Sir/Madam:

The enclosed documents (s) was recorded pursuant to the provisions of 49 U.S.C.  
11301 and CFR 1177.3 (c), on 1/19/99 at 9:15 AM, and  
assigned recordation numbers (s): 21975, 21976, 17753-A, 19063-A and 19692-A.

Sincerely Yours,

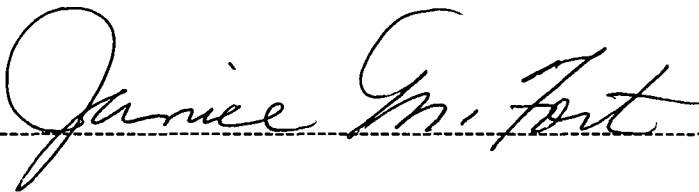
  
Vernon A. Williams

Enclosure(s) (5)

130.00

\$\_\_\_\_\_ The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid. In the event of an error or any questions concerning this fee, you will receive a notification after the Surface Transportation Board has an opportunity to examine your document.

Signature-----



JAN 19 '99

9-15 AM

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is dated January 7, 1999 ("Closing Date"), by and between THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation ("Assignor") and HELM FINANCIAL CORPORATION, a California corporation ("Assignee").

R E C I T A L S

WHEREAS, pursuant to the terms and conditions of that certain Purchase and Sale Agreement dated as of January 7, 1999, between Assignor and Assignee ("**Agreement**") the Assignor desires to assign to Assignee all of its rights under the Lease of Railroad Equipment dated as of February 28, 1992 ("**Lease**"), between Assignor and The Denver and Rio Grande Western Railroad Company ("**Lessee**") pertaining to the railcars described on Schedule A hereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment. The Assignor hereby forever and irrevocably assigns, transfers and sets over to the Assignee all of its right, title and interest in and to the Lease, subject to no liens, security interests or other encumbrances; provided, however, that the Assignor retains and does not assign to the Assignee, the following rights: (a) the right to payment of (i) all rents and all other amounts due and payable under the Lease for all rental periods ending on or prior to December 31, 1998, and (ii) the right to the payment of indemnities and liability insurance proceeds which are now or hereafter payable to the Assignor for its own account under the Lease, in respect of any claims against the Assignor relating to periods ending on or prior to January 7, 1999, and (b) the right to enforce payment of the amounts referred to in the foregoing clause (a) of this paragraph without cost or expense to the Buyer.

2. Assumption. Assignee hereby assumes and agrees to fully and timely perform all of the obligations and liabilities of the Assignor under the Lease, to the extent such obligations and liabilities first arise after January 7, 1999.

3. Further Assurances. At the request of Assignee and without further consideration, the Assignor shall execute and deliver such additional instruments of transfer and will take such other action as Assignee may reasonably request in order to more effectively carry out the transactions contemplated in this Assignment.

4. **Counterparts.** This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.


5. **Binding Effect.** This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

6. **Governing Law.** This Assignment shall be governed by, and construed in accordance with, the laws of the State of New York without reference to its conflict of laws provisions.

IN WITNESS WHEREOF, the parties pursuant to due corporate authority have executed this Assignment and Assumption Agreement through their authorized representatives as of the date first above written.

**ASSIGNOR:**

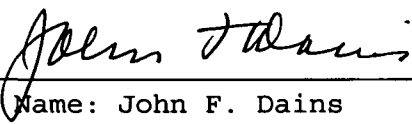
**THE CIT GROUP/EQUIPMENT FINANCING, INC.**

By:   
Print Name: **LAWRENCE E. LITTLEFIELD**  
Title: **VICE PRESIDENT**

1211 Avenue of the Americas  
New York, NY 10036

**ASSIGNEE:**

**HELM FINANCIAL CORPORATION**

By:   
Print Name: John F. Dains  
Title: Chief Financial Officer

One Embarcadero Center, Suite 3700  
San Francisco, CA 94111

**SCHEDULE A TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

**Equipment Description:**

One hundred six (106), 100 ton, three pocket, 4,000 cubic foot capacity, rotary coupled, open top hopper railcars manufactured by Bethlehem Steel in 1974 and 1975.

**Unit Numbers:**

DRGW 40625 - 40671, 40673 - 40676, 40678 - 40689, 40691 - 40699, 40701 - 40734

STATE OF CALIFORNIA )  
 ) S.S.  
COUNTY OF SAN FRANCISCO )

On this 31st day of December, 1998, before me, Matthew M. Ogburn, personally appeared John F. Dains, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

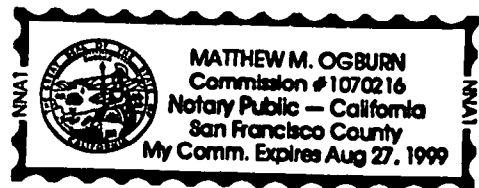
Matthew M. Ogburn  
Notary Public

My commission expires:

(Seal)

August 27, 1999

STATE OF NEW YORK )  
 ) S.S.  
COUNTY OF NEW YORK )



On this 2<sup>nd</sup> day of January, 1999, before me, Barbara Garner, personally appeared Lawrence R. Pittsford, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Barbara Garner  
Notary Public

My commission expires:

(Seal)

BARBARA GARNER  
Notary Public, State of New York  
No. 01GA5065133  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires Sept 3, 1998  
2000

(i)